

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

**JUDITH THIBEAU AND GEORGE
THIBEAU,**

Plaintiffs

v.

**UNITED STATES OF AMERICA,
EAST BOSTON NEIGHBORHOOD
HEALTH CENTER CORPORATION**

Defendants.

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Case No. 04-10643- MLW

DEFENDANT'S ANSWER TO SECOND AMENDED COMPLAINT

Defendant United States of America, by its undersigned attorneys, hereby answers
Plaintiffs' Second Amended Complaint as follows:

1. Admit.
2. Admit.
3. Admit.
4. Deny.
5. Admit.
6. The United States is without knowledge or information sufficient to form a belief as to the truth of this allegation directed to co-defendant East Boston Neighborhood Health Center Corporation.
7. The United States is without knowledge or information sufficient to form a belief as to the truth of this allegation directed to co-defendant East Boston Neighborhood Health Center Corporation.
8. This paragraph contains conclusions of law regarding jurisdiction to which no

response is required. To the extent that this paragraph alleges that the United States operates a health center, that was negligent, those allegations are denied. Defendant also denies that this Court has subject matter jurisdiction over the claim by George Thibeu.

9. Defendant admits only that Judith Thibeu filed an administrative claim with the Department of Health and Human Services on August 11, 2003, regarding an alleged injury sustained on September 26, 2002, and denies the remainder of this paragraph. Defendant specifically denies that George Thibeu exhausted his administrative remedies, and states affirmatively that his administrative claim was filed on June 8, 2004.

10. Defendant admits only that it received the administrative claim of Judith Thibeu on August 11, 2003.

11. Deny.

12. This paragraph states a conclusion of law regarding jurisdiction over the claims against co-defendant East Boston Neighborhood Health Center Corporation and therefore requires no response.

13. Defendant admits that Judith Thibeu visited the health center located at 79 Paris Street, East Boston, on September 26, 2002.

14. The United States is without knowledge or information sufficient to form a belief as to the truth of this allegation directed to co-defendant East Boston Neighborhood Health Center Corporation.

15. The United States is without knowledge or information sufficient to form a belief as to the truth of this allegation directed to co-defendant East Boston Neighborhood Health Center Corporation.

16. Admit.

17. Admit.

18. Deny.

19. The United States is without knowledge or information sufficient to form a belief as to the truth of this allegation directed to co-defendant East Boston Neighborhood Health Center Corporation.

20. Deny.

21. This paragraph contains conclusions of law as to which no response is required. To the extent a response is required, deny.

22. This paragraph contains conclusions of law directed to co-defendant East Boston Neighborhood Health Center Corporation as to which no response is required by the United States. To the extent a response is required, deny.

23. Defendant admits that Judith Thibeu had her eyes examined at the Vision Center on September 26, 2002.

24. Admit only that dilating drops were administered to Ms. Thibeu's eyes.

25. Defendant is without knowledge or information sufficient to form a belief as to the truth of this allegation.

26. Admit.

27. Defendant is without knowledge or information sufficient to form a belief as to the

truth of this allegation.

28. Defendant is without knowledge or information sufficient to form a belief as to the truth of this allegation.

29. Deny.

30. Deny.

31. Deny.

32. Deny.

33. Deny.

34. Defendant is without knowledge or information sufficient to form a belief as to the truth of this allegation.

35. Deny.

36. Deny.

37. Defendant is without knowledge or information sufficient to form a belief as to the truth of this allegation.

38. Defendant is without knowledge or information sufficient to form a belief as to the truth of this allegation.

39. Defendant is without knowledge or information sufficient to form a belief as to the truth of this allegation.

40. This allegation is directed to co-defendant East Boston Neighborhood Health Center Corporation and therefore requires no response from the United States. To the extent a response is required, the United States is without knowledge sufficient to form a belief as to the truth of this allegation.

41. This allegation is directed to co-defendant East Boston Neighborhood Health Center Corporation and therefore requires no response from the United States. To the extent a response is required, the United States is without knowledge sufficient to form a belief as to the truth of this allegation.

42. Defendant is without knowledge or information sufficient to form a belief as to the truth of this allegation.

43. This allegation is directed to co-defendant East Boston Neighborhood Health Center Corporation and therefore requires no response from the United States. To the extent a response is required, the United States is without knowledge sufficient to form a belief as to the truth of this allegation.

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47. This allegation is directed to co-defendant East Boston Neighborhood Health Center Corporation and therefore requires no response from the United States. To the extent a response is required, the United States is without knowledge sufficient to form a belief as to the truth of this allegation.

48. This allegation is directed to co-defendant East Boston Neighborhood Health Center Corporation and therefore requires no response from the United States. To the extent a response is required, the United States is without knowledge sufficient to form a belief as to the truth of this allegation.

49. Defendant is without knowledge or information sufficient to form a belief as to the truth of this allegation.

50. Defendant is without knowledge or information sufficient to form a belief as to the truth of this allegation.

51. Defendant is without knowledge or information sufficient to form a belief as to the truth of this allegation.

52. Defendant repeats the responses contained in paragraphs 1 through 51 as if fully set forth herein.

53. Deny.

54. Defendant repeats the responses contained in paragraphs 1 through 51 as if fully set forth herein.

55. Deny.

56. Defendant repeats the responses contained in paragraphs 1 through 51 as if fully set forth herein.

57. This allegation is directed to co-defendant East Boston Neighborhood Health Center Corporation and therefore requires no response from the United States. To the extent a response is required, the United States is without knowledge sufficient to form a belief as to the truth of this allegation.

58. Defendant repeats the responses contained in paragraphs 1 through 51 as if fully set forth herein.

59. This allegation is directed to co-defendant East Boston Neighborhood Health Center Corporation and therefore requires no response from the United States. To the extent a response is required, the United States is without knowledge sufficient to form a belief as to the truth of this allegation.

AFFIRMATIVE DEFENSES

First Defense

The Complaint fails to state a claim upon against defendant upon which relief can be granted.

Second Defense

Any injuries incurred by Plaintiffs were not proximately caused by the acts or omissions of Defendant, its agents and employees.

Third Defense

Plaintiffs' alleged injuries were caused at least in part by their own failure to exercise due care.

Fourth Defense

This Court lacks subject matter jurisdiction over the claims of George Thibau.

Fifth Defense

George Thibeu has failed to exhaust his administrative remedies.

Defendant states affirmatively that Plaintiffs are not entitled to a trial by jury under the Federal Tort Claims Act.

Respectfully submitted,

Michael J. Sullivan
United States Attorney
District of Massachusetts

Dated: August 12, 2004

/s/ Christopher Alberto
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